

alleged that Angel Simpson, the family services worker assigned to the case, found R.Z. living with his maternal grandmother, Gisela Aschhoff, in a van parked behind a mini-storage business in Dover. Aschhoff informed Simpson that she had been keeping R.Z. since he was two-and-a-half years old because his mother, McLin, did not want him. Aschhoff is McLin's mother and R.Z.'s grandmother.

The affidavit stated that Aschhoff, McLin, and R.Z. came to the United States from Germany for a three-week vacation in 1999 but never returned. Aschhoff's passport had expired but she and R.Z. were traveling the United States digging up crystals to sell for gas and food money. Aschhoff planned to build a communal home in Quartzite, Arizona, where she and R.Z. would live with a group of people she had recently met in Mt. Ida. While in Mt. Ida, Aschhoff met a man named "Rocky," who she allowed to live in the van with her and R.Z. Rocky traveled from Mt. Ida with Aschhoff and R.Z. so that he could help Aschhoff sell her possessions and raise enough money for the move to Arizona. Aschhoff told Simpson that she was not worried about her or R.Z.'s safety because God would never let her meet dangerous people.

The affidavit further claimed that R.Z. had not been in school since November 2003 and that he was not permitted to enroll in Florida in 2003 because he had not received his immunization shots. It stated that Aschhoff claimed to have home-schooled R.Z. in Florida in 2004 although she could not speak English very well. R.Z. was not home-schooled in 2005. Simpson noted in the affidavit that R.Z. could not spell his last name, misspelled his first name, and could not write the alphabet.

The affidavit stated that R.Z. was "dirty and unkempt" and wore dirty clothes with holes. He had very crooked and unhealthy-looking teeth and appeared to be very small for his age. R.Z. told Simpson that he had recently been to a doctor in Hot Springs and that he had to have two

blackened, rotten teeth pulled because they made him very sick. R.Z. had not taken a bath within the two weeks prior to the time of the affidavit. His last bath had been taken at a Motel 6 in Russellville. Prior to taking a bath in Russellville, he had not taken a bath since August 17, 2005.

Aschhoff stated that the two washed their hands and faces with water every other day because “they are from nature.” She also claimed that she had a “gift” and could heal people and that she can change negative energy into positive energy. Aschhoff did not understand why R.Z. had to go to school or live in a house, nor did she comprehend why it was wrong to allow strangers to live in her van.

R.Z. told Simpson that he had only eaten a bagel with cheese for the whole day, while Aschhoff stated that they usually ate twice a day but that R.Z. was sometimes not hungry. Simpson did observe a cooler containing milk, cereal, coffee, bagels, and juice.

Dover police arrested Aschhoff and held her for the Immigration and Naturalization Service (INS), which eventually deported Aschhoff back to Germany. R.Z. was placed into foster care. A probable cause order was entered on November 7, 2005, finding that the emergency conditions necessitating R.Z.’s removal from his custodian still persisted and that R.Z. should remain in ADHHS custody. The court ordered ADHHS to request an International Compact on the Placement of Children (ICPC) home study on McLin’s residence.

After several review hearings, ADHHS filed a motion to terminate reunification services. The motion alleged that R.Z. was “abandoned, chronically abused, [and] subjected to extreme or repeated cruelty,” and that there was little likelihood that services would result in successful reunification. The court granted the motion to terminate after a June 12, 2005 hearing. The court found that ADHHS had made reasonable efforts to reunite McLin and R.Z. and that ADHHS had

proven by clear and convincing evidence that there was little chance that continuing reunification efforts would be successful.

In a report to the court on August 31, 2006, ADHHS noted that R.Z. was up-to-date on his medical and dental care and was otherwise in good health; that R.Z. was doing well emotionally; and that R.Z. had started the second grade and was enjoying school. R.Z.'s biological father, Paul Volker Zeppenfield, had last been seen in Germany, but had not had contact with R.Z. or his mother in over six years. McLin was noted to be residing in Florida with her new husband and their two children. McLin had been fully aware that Aschhoff and R.Z. had been living in a van but had done nothing to intervene. McLin had not had any face-to-face visitations with R.Z. and, although ADHHS purchased R.Z. a cell phone so that McLin could call him, McLin had made no attempt to maintain regular phone contact with R.Z.

On July 19, 2006, ADHHS filed a petition for termination of parental rights, alleging the following grounds pursuant to Ark. Code Ann. § 9-27-341: (a) R.Z. had been adjudged dependent-neglected and had continued out of his parents' home for more than twelve months despite a meaningful effort by ADHHS to rehabilitate the home and correct the conditions which caused removal; (b) R.Z. had continued out of his parents' home for twelve months and his parents had willfully failed to provide R.Z. with significant material support; (c) R.Z. had been abandoned by his parents; and (d) subsequent to the filing of the original petition, other issues arose, demonstrating that R.Z.'s return to his mother would be contrary to his health, safety, or welfare.

The termination hearing was held on September 25, 2006. McLin's attorney informed the court that McLin was unavailable for the hearing because there was an illness in her family and due to financial concerns. McLin requested a continuance but the court denied the request, noting that

McLin had previously been granted a continuance due to an illness in the family. The court found that McLin's motion for continuance lacked good cause.

Kelly Braton, an ADHHS employee, testified that she was assigned to this case and that R.Z. had limited contact with McLin. Aschhoff, McLin, and R.Z. were living together in Florida when McLin married her current husband. At some point thereafter, problems developed between McLin's husband and Aschhoff. Aschhoff then left the home with R.Z., and since leaving the home, R.Z. had seen McLin only for a couple of weeks in June 2005 and a couple of days in August 2005. Braton also testified that she contacted the German consulate and there was no record of R.Z.'s father inquiring about him. She stated that Aschhoff had always been R.Z.'s primary care giver. Braton stated that R.Z. was "smart," "well-mannered," and "polite" and that he was currently catching up in school and was only one grade behind. R.Z. had bonded well with his foster parents.

Braton further testified that when she informed McLin that R.Z. had been placed in foster care, McLin told her that there was nothing she could do about how her mother was caring for her son. McLin also failed to complete parenting classes as ordered by the court. The State of Florida denied the ICPC home study on McLin's residence because she was an illegal alien and could not provide the proper documentation for the background checks. McLin also cancelled a scheduled home visit claiming that she had a toothpick stuck in her foot. In addition, McLin's residence did not have enough space for R.Z. A room was being constructed for R.Z.; however, it was not complete. No additional information was provided by McLin to warrant a new home study, and she never requested one.

Braton stated that McLin had not seen R.Z. face-to-face since ADHHS got involved in the case, except for the day of the permanency-planning hearing. She testified that R.Z. did not know

McLin when he saw her. In fact, McLin showed no concern for R.Z. on the day of the hearing but was only concerned about gaining access to the storage unit to retrieve Aschhoff's personal items. McLin delivered a few of R.Z.'s personal possessions to Braton but she never asked to see R.Z. and never inquired as to how he was doing. McLin also failed to maintain contact with R.Z. on the cell phone provided by ADHHS. McLin, however, did send a couple of letters and a Christmas card.

On October 11, 2006, the court entered an order terminating McLin's parental rights. The court specifically found that ADHHS had proven by clear and convincing evidence that R.Z. had lived outside the home of his parents for twelve months and that his parents had willfully failed to maintain meaningful contact with him; that R.Z. had been abandoned; and that subsequent to the filing of the original dependency-neglect petition, other issues arose, indicating that R.Z.'s return to his parents would be contrary to his health, safety, or welfare.

On appeal, McLin argues that the court erred in finding that there was sufficient evidence to terminate her parental rights. She specifically argues that the court erred in denying her motion for continuance and in finding that she abandoned R.Z.

Motion for Continuance

A motion for continuance shall be granted only upon a showing of good cause and only so long as is necessary. *Smith v. Ark. Dep't of Human Servs.*, 93 Ark. App. 395, --- S.W.3d --- (2005). It is well-settled that the granting or denial of a motion for continuance is within the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion amounting to a denial of justice. *Id.* Additionally, the appellant has the burden of showing that prejudice resulted from the denial of the motion for continuance. *Id.* When determining whether to grant a continuance, the trial court should consider the following factors: (1) the diligence of the

movant; (2) the probable effect of the testimony at trial; (3) the likelihood of procuring the attendance of the witness in the event of a postponement; and (4) the filing of an affidavit stating not only what facts the witness would prove, but also that the appellant believes them to be true. *Id.*

The trial court did not abuse its discretion when it denied McLin's motion for continuance. This was McLin's second request for continuance after having received one continuance. The trial court was not obliged to postpone the termination hearing for a second time without reliable and concrete reasons for doing so. Moreover, McLin has offered no proof that she was prejudiced by the denial of her continuance motion. Although McLin was not present at the termination hearing, she was represented by competent counsel; and while she claims that her testimony was crucial to the disposition of this case, she does not persuasively explain how her testimony would have changed the outcome of the termination hearing. McLin was present at an earlier permanency planning hearing in which she offered no testimony. She also failed to make arrangements to participate in the termination hearing via telephone. Finally, McLin failed to file an affidavit stating what her proposed testimony would prove.

Abandonment

An order of parental termination is reviewed de novo and will not be reversed unless clearly erroneous. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W. 3d 391 (2005). We give due regard to the opportunity of the chancery court to judge the credibility of witnesses and in matters

involving the welfare of young children, we give great weight to the trial judge's personal observations. *Bearden v. Ark. Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

A heavy burden is placed upon the party seeking to terminate parental rights because this is an extreme remedy in derogation of the natural rights of the parents. *Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005). Parental rights are not to be passed over lightly, but must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children; thus, parental rights will not be enforced to the detriment of the health and well-being of the child. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997).

The court can terminate parental rights upon a finding of the following grounds:

(ii) (a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

(b) To find willful failure to maintain meaningful contact, it must be shown that the parent was not prevented from visiting or having contact with the juvenile by the juvenile's custodian or any other person, taking into consideration the distance of the juvenile's placement from the parent's home.

(iv) A parent has abandoned the juvenile;

(vii)(a) That other facts or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

Ark. Code Ann. § 9-27-341(b)(3)(B) (Supp. 2005).

“Abandonment” is defined as:

the failure of the parent to provide reasonable support and to maintain regular contact with the juvenile through statement or contact when the failure is accompanied by an intention on

the part of the parent to permit the condition to continue for an indefinite period in the future and failure to support or maintain regular contact with the juvenile without just cause or an articulated intent to forego parental responsibility.

Ark. Code Ann. § 9-27-303 (2) (Supp. 2005).

The chief consideration in determining whether a parent has abandoned her child is whether the periods of non-communication or non-support were justifiable. *In re Adoption of A.M.C.*, --- Ark. ---, --- S.W.3d --- (Jan. 4, 2007). McLin maintains that she did not abandon R.Z. She states that she did not manifest studied indifference towards R.Z. and did not fail to maintain meaningful contact with him. The undisputed facts, however, paint the opposite picture. McLin was aware that her young son was living in a van behind a mini-storage building and did nothing about it. She only offered the excuse that there was nothing she could do about the way her mother was raising her son. McLin claims that she is a victim of circumstances because Aschhoff left her home with R.Z. after having problems with McLin's new husband. Yet, during the six and one-half years that Aschhoff had physical custody of R.Z., McLin did nothing to get her son. This is the case, even though Aschhoff and R.Z. visited Florida on at least two occasions.

Moreover, McLin simply failed to maintain any type of relationship with her son and acted with total indifference to his foster placement. McLin did not visit R.Z. while he was in foster care and did not even call him, although ADHHS provided R.Z. with a cell phone to allow unfettered communication between R.Z. and McLin. Indeed, McLin even failed to complete the parenting classes as ordered by the court.

Under these circumstances, the trial court did not err in finding that McLin had abandoned R.Z. and in terminating her parental rights. Accordingly, we affirm.

Affirmed.

VAUGHT and HEFFLEY, JJ., agree.